REMARKS

Claims 1, 4-9, 11-12, 14-19, 21-22, and 25-31 are pending in this application. Claims 1-9, 11-23, and 25-33 were rejected under 35 U.S.C. §103. Based on the foregoing amendments, and the following remarks, Applicants hereby respectfully request allowance of claims 1, 4-9, 11-12, 14-19, 21-22, and 25-31 pending in the application.

Applicants have amended claims 1, 4, 6, 8, 11, 12, 14, 19, 22 and 25 and cancelled claims 2, 3, (10)[1], 13, 20, 23, (24), 32, and 33. Applicants have amended the claims such that all claims are limited to "peanut butter," or have canceled the claims that were not limited to peanut butter. Applicants have amended claims 1, 11, 12, 14, and 25 to specifically require that the densities are measured after they are discharged from the pressurized container. Claims 1 and 12 were amended to include that the spread composition was in a pressurized container and claim 1 was further amended to limit the claim to peanut butter. Claim 12 was also amended to add a limitation from claim 13 regarding inhibiting oil separation. Claims 14 and 15 were also amended to limit the claims to peanut butter. Claims 4, 6, 8, 19 and 22 were amended to comprise an emulsifier in the homogenous mixture.

Support for these amendments can be found throughout the application and, in particular, the support for claims 1, 11, 12, 14 and 25 can be found on pages 8-13 and 15 of the application. Additional support for the amendment to claim 12 can be found in claim 13 and on pages 16-23 and additional support for the amendment to Claim 1 can also be found on pages 16-23. Support for the amendment to claims 4, 6, 8, 19 and 22 can be found at pages 9-13.

I. Summary of Interview

Applicants thank the Examiner for the personal interview granted the undersigned on February 19, 2008, in the Examiner's office. Although no agreement was reached, the interview was very helpful.

1 Parentheses indicate the claim was canceled in a previous Office Action Response.

At the interview, photographs of the inventive peanut butter product discharged from a pressurized container were shown to the Examiner. Additionally, similar photographs of peanut butter product prepared as described in Bower and Musser (the primary art cited against the claims in the last Office Action) were also shown to the Examiner as comparative samples. The comparative samples were contained in the same type of container as used for the inventive product. As discussed at the interview and shown in the photographs, the peanut butter spread prepared using the prior art references was generally very inferior to the inventive product; the product based on the prior art references would not, we believe, be acceptable to consumers.

The photographs shown to the Examiner are attached to the Declaration of Carrie M. Kincaid. As discussed at the interview, Applicants have also attached this Declaration in a PDF format to an email sent directly to the Examiner. This allows the color photographs to be placed in the record.

Applicants also discussed the possibility of limiting the claims to an edible spread comprising peanut butter. In this present Amendment, the claims have been amended and/or canceled to limit all claims to peanut butter. Possible amendments to make the claims cleaner were also discussed. Applicants have now amended the claims to specifically require that the composition be in a pressurized container and that the density of the composition is measured after it is discharged from the pressurized container. Again, Applicants thank the Examiner for this very helpful interview.

II. Claim Rejections under 35 U.S.C. §103

Claims 1, 4-11, 14-18, 21, 24, and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,366,494 issued to Bower et al. (hereinafter "Bower") and further in view of literature reference Methods in Food Analysis, Chapter VII "Densimetric Methods" by Maynard Joslyn (hereinafter "Joslyn"). Claims 2, 3, 9, 12, 13, 19, 20, 22, and 23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bower, Joslyn and further in view of U.S. Patent No. 2,883,286 issued to Musser. Claims 26-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bower in

view of Joslyn, and Musser, and further in view of a Food Engineering Article (hereinafter "Article").

A. Rejection of Claims 1, 4-11, 14-18, 21, 24 and 25

Claims 1, 4-9, 11, 14-18, 21 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bower and Joslyn. Applicants respectfully traverse the rejection because Bower and Joslyn do not disclose or suggest each and every limitation of the rejected claims as written or amended.

The Examiner has attempted to use Bower in order to show a composition comprising a fiber-based plant material (i.e., raspberry puree as in Bower's Example 1) and an oil-in-water emulsion which can be discharged from a pressurized container to provide an aerosol whip.

As indicated above, all of the present claims are now limited to peanut butter. Although the raspberry puree of Bower may contain fiber, it is very different from the peanut butter of the present invention. As Bower makes clear, the Bower invention is directed to **water-based** foodstuffs. Moreover, Bower specifically notes one essential component of its invention is a "water based fluid foodstuff" (col. 1, lines 59-62) and then adds that the "term 'water based foods' means, for the purpose of this invention, foodstuffs **having water as a major constituent**" (col. 2, lines 8-10 (emphasis added)). All of Bower's actual examples are clearly "water based foodstuffs" with water as a major constituent – raspberry puree (Example 1), cola flavored syrup (Example 2), honey (Examples 3 and 4), corn syrup (Example 5) – and all are very different from peanut butter. All listed examples of suitable water based foodstuffs given in Bower's specification (i.e., marshmallow, sour cream, mayonnaise, salad dressing, flavored toppings, cream cheese, cordials, and catsup (col. 1, lines 59-70; col. 5, lines 60-65)) contain water as a major constituent and are also very different from peanut butter.[2]

2 The Examiner also notes that the microcrystalline cellulose which is used in Bower's Example 1 might also be considered to contain fiber. Bower specifically teaches that the microcrystalline cellulose (which by the way is 20% in water and thus "water based") is used as a stabilizer for the oil-in-water emulsion (a second essential component of Bower). Clearly, the use of microcrystalline cellulose in the Bower invention, regardless of its function, cannot modify Bower's definition of "water based foodstuff" nor make peanut butter such a water based foodstuff.

Peanut butter, on the other hand, is a low water-containing food and would not be considered as a water-based foodstuff, as that term is used in Bower. Peanut butter typically contains less than about 0.5 percent moisture, which clearly is not a major constituent.

By requiring a water based foodstuff as one of the essential components of its aerosol composition, Bower effectively teaches away from the present invention. The secondary reference Joslyn was cited by the Examiner only to show typical densities of various food products. Bower combined with Joslyn cannot render the present invention obvious.

Thus, independent claims 1 and 14, and dependent claims 4-9, 11, 15-18, 21 and 25 that depend therefrom, are therefore allowable for the reasons discussed above. Applicants respectfully submit that the cited references do not disclose or suggest the invention as claimed in claims 1, 4-9, 11, 14-18, 21, and 25, nor are these claims rendered obvious over Bower and Joslyn. Applicants respectfully request reconsideration and allowance of these claims.

B. Rejection of Claims 2, 3, 9, 12, 13, 19, 20, 22 and 23

Claims 2, 3, 9, 12, 13, 19, 20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bower as further evidenced by Joslyn and further in view of Musser. Claims 2, 3, 13, 20 and 23 have been canceled. The arguments regarding Bower and Joslyn are hereby incorporated by reference. Musser does not correct these and other deficiencies in Bower or Joslyn to render Applicants' invention obvious. Applicants respectfully traverse this rejection because Applicants' invention is not rendered obvious by Bower, Joslyn, or Musser taken alone or together.

Musser provides a chocolate flavored foam topping. The Examiner combines the use of chocolate in an aerosol container with Bower to suggest that it would be obvious to use the chocolate composition of Musser in the Bower system. Applicant respectfully disagrees. Indeed, considering Musser and Bower in their entities, one of ordinary skill in the art would be discouraged from making such a combination.

As discussed above, Bower's invention is directed towards water based food products that can be discharged. Musser's invention is directed towards a chocolate flavored topping[3] that can be dispersed as a foam or a whip using a compressed gas.

Conventional chocolate is not a water based food product. Generally, conventional chocolate has less than about 1 percent water and clearly would not be considered a water based foodstuff under Bower's definition (i.e., "foodstuffs **having water as a major constituent**" (col. 2, lines 8-10 (emphasis added)). Thus one of ordinary skill in the art would not have combined the teachings of Bower and Musser as suggested by the Examiner. This alone rebuts the Examiner's rejection.

Moreover and additionally, the present claims are now limited to peanut butter. Neither Bower nor Musser (or any art of record) teach or suggest that peanut butter could be discharged in a stable form from a pressurized container. One of ordinary skill in the art would certainly consider peanut butter to be very different from both the water based foodstuffs of Bower as well as the chocolate flavored topping of Musser. Indeed, one of ordinary skill in the art would consider peanut butter to be very different from the chocolate flavored topping of Musser and even more different from conventional chocolate. Teachings regarding such water based foodstuffs and chocolate products are not especially relevant for peanut butter.

Thus, Applicants respectfully submit that claims 9, 12, 19 and 22 are not rendered obvious over Bower alone or in combination with Joslyn and Musser. Applicants respectfully request that this rejection be withdrawn.

C. Rejection of Claims 26-33

Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over bower, Joslyn, and Musser and further in view of the Article. Claims 32 and 33 have been canceled. This arguments above regarding Bower, Joslyn, and Musser are hereby incorporated by reference. The Article does not correct these and other deficiencies in

3 Musser provides a number of relatively complex mixtures to prepare a chocolate flavored foam whip. For example, such composition includes a chocolate component (e.g., cocoa and/or chocolate liquor), fat, sugar, milk (milk solids or liquid whole milk), water, emulsifiers, and stabilizers. Col. 4, line 73 through col. 7, line 40.

Bower, Joslyn and/or Musser to make Applicants' invention obvious. Applicants respectfully traverse this rejection for the reasons stated herein.

The Food Engineering article is related to a pressurized container and does not correct any of the deficiencies discussed above. Thus, Applicants respectfully submit that claims 26-31 are not rendered obvious over Bower alone or in combination with Joslyn, Musser and/or the Article. Applicants respectfully request that this rejection be withdrawn.

III. Experimental Test Results

Although Applicants believe that the arguments above are sufficient to overcome all of the Examiner's rejections, they have carried out some comparative experiments using the teachings of the primary references (i.e., Bower and Musser) to show that their efforts did not produce a suitable peanut butter product. Thus, these experiments further affirm and support the non-obviousness of the present claims. These experiments were presented informally at the interview of February 19, 2008. The exhibits discussed at the interview are attached to the Declaration of Carrie M. Kincaid who organized and supervised the experiments described therein. And, at the request of the Examiner, Applicants will supply the Examiner with a copy of the Declaration and the supporting exhibits in a PDF version so that color copies of the exhibits can be included in the file, if desired.

As detailed in the attached Declaration, peanut butter products containing 25 and 35 percent peanut butter were prepared using the teaching of Bower and Musser and compared to the inventive peanut product containing 40 percent peanut butter. As the amount of peanut butter in the product increases, it becomes more and more difficult to prepare acceptable aerosol dischargeable peanut butter products that, when discharged, do not show oil separation and that do maintain the texture, appearance, and other organoleptic properties normally associated with conventional peanut butter. In other words, and assuming the Bower and Musser methods could provide acceptable aerosol dischargeable peanut butter products, the comparative examples should have been much easier to prepare at such lower peanut butter levels than the inventive product at a higher peanut butter level. That the higher level inventive peanut butter product was clearly

superior to either of the lower level comparative products clearly demonstrates the non-obviousness of the present invention. The comparative products were not stable, were not resistant to oil separation when stored in pressurized containers, and did not provide a conventional peanut butter product when dispensed. The inventive products, on the other hand, were stable, were resistant to oil separation when stored in pressurized containers, and did provide a peanut butter that, when dispensed, closely resembled traditional high quality peanut butter products commercially and currently available in non-pressurized containers, even at the higher peanut butter levels.

During testing, a sample was viewed as having a passing result if the following criteria was met: (1) the dispensed product closely resembled a traditional peanut butter product; (2) there was no oil separation upon discharge from the pressurized can; (3) there was no sheen of the product upon discharge; and (4) there was no oil leaking out of the can nozzle. Traditionally, peanut butter is a much harder product to keep stable than any of the other food components disclosed in either Bower or Musser.

The Bower comparative products were prepared using the ingredients as outlined in Example 1 of the Bower patent with the addition of peanut butter. Specifically, the Bower patent discloses using water, microcrystalline cellulose (MCC), vegetable oil (i.e., lard) as the edible oil, sodium stearoyl lactylate (equivalent to glyceryl lactostearate), polyoxyethylene sorbitan monooleate (i.e., Polysorbate 80), and raspberry puree. The octafluorocyclobutane was not included in the product makeup as an aerosol propellant, since Applicants utilize a separate pressurized air chamber where the propellant does not interact with or contact the product. The edible oil was in the amount of about 5%, water was at least 10% (and actually was greater if the water from the MCC solution and the raspberry puree are included), and the peanut butter was included at 25% and 35%. Thus, all Bower comparative samples were made within Applicants' claimed ranges (i.e., 0.5-10% edible oil, 10-60% water, and 10-45% peanut butter). The Attachment to the Declaration outlines the preparation, ingredients, and amounts used in preparing the Bower comparative products. The methods outlined in Bower were followed in preparing these experimental samples.

The Musser comparative samples were prepared using the ingredients as outlined in Musser (in particular at columns 1-6), with the substitution of peanut butter for the chocolate component. The Musser patent discloses using a stabilizer (i.e., a protein), milk solids (i.e., milk protein concentrate, or "MPC"), liquid whole milk, sugar, and an emulsifier (i.e., lecithin). The edible oil can comprise milk protein concentrate (where oil is defined as an edible fat in a liquid state on page 7 of Applicants' specification). The peanut butter sample was likewise prepared at 25% and 35%; all Musser comparative samples were made within Applicants' claimed ranges of the edible oil and peanut butter (i.e., 0.5-10% edible oil and 10-45% peanut butter). The Attachment to the Declaration outlines the preparation, ingredients, and amounts used in preparing the Musser comparative products. The methods outlined in Musser were followed in preparing these experimental samples.

Applicants' samples were prepared as outlined in Example 1 of its specification except that sodium alginate, titanium dioxide slurry, polysorbate 60, caramel color, and peanut flavor were not utilized. The edible oil was approximately 2.5%, water was about 40%, and the peanut butter was prepared at 40%; all within Applicants' claimed ranges (i.e., 0.5-10% edible oil, 10-60% water, and 10-45% peanut butter). The Attachment to the Declaration outlines the preparation, ingredients, and amounts used in preparing Applicants' sample products. The method in Example 1 of Applicants' specification was followed in preparing these experimental samples.

At 35% peanut butter, both the Bower and Musser comparative samples had visible oil separation when dispensed. (*See* Attachment to the Declaration). At 25% peanut butter, the Musser comparative sample was extremely fluid (i.e., almost a liquid) so it was difficult to observe if separation of the oil had occurred upon dispensing (*see* Attachment to the Declaration). The sample was, however, clearly not uniform in its appearance, which suggests oil separation. Furthermore, the 25% Musser sample after 46 days had visible mold growth in its dispensed stream, while the 25% sample dispensed after 6 days did not. The Bower comparative sample at 25% peanut butter had oil separation in the product as it was dispensed from the can; the remaining discharged product had a very high sheen suggesting oil separation. (*See* Attachment to the Declaration).

In comparison, Applicants' inventive formula at 40% peanut butter was very stable, with no sheen and no oil separation visible. (*See* Attachment to the Declaration). Therefore, every comparative sample exhibited high sheen and/or clear oil separation upon dispensing; all comparative examples were considered failures. Applicants' sample also had no visible mold growth throughout the test period (i.e., 46 days). Traditionally, it is difficult to produce a product stable to microbial growth when combining water and peanut butter, as evidenced by the 25% Musser sample after 46 days.

Furthermore, Applicants' inventive sample was the only one of all the experimental samples that actually looked like traditional peanut butter when dispensed. Appearance is a key factor to consumer acceptance. The Bower samples all were very loose and runny with a high sheen and unpleasant color. They also appeared to be foamy even though propellant was not injected directly into the product. Foam is an undesirable texture since it is very dissimilar to commercial peanut butter. The Musser samples at both 25% and 35% peanut butter were very shiny and much too runny; the samples would not stay on a cracker if discharged onto one, as is typically a desirable use of the Applicants' inventive product. All Musser comparative samples were clearly not homogeneous mixtures.

Overall the Musser and Bower samples were considerably less stable than Applicants' inventive product. They had an unacceptable consistency and appearance in the dispensed products and showed oil separation. None of these comparative products would be acceptable to a consumer looking for a "real peanut butter" aerosol product.

The Applicants have found a unique combination of peanut butter, oil and other components to deliver a texture and appearance that is very similar to commercial peanut butter, and has little or no oil separation while stored under pressure. Both of these factors are very important to marketing such a product to consumers.

The comparative examples clearly demonstrate that the Bower and Musser procedures could not produce acceptable dischargeable peanut butter products even if peanut butter was substituted for or added to the substrates used in the Bower and Musser reference.

CONCLUSION

In view of the foregoing, Applicants submit that claims 1, 4-9, 11-12, 14-19, 21-22 and 25-31 are patentable over the cited references and hereby respectfully request reconsideration and allowance of claims 1, 4-9, 11-12, 14-19, 21-22 and 25-31.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: April 25, 2008

/Richard A. Kaba/
Richard A. Kaba
Registration No. 30,562

FITCH, EVEN, TABIN & FLANNERY
120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007